



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 4TH DAY OF FEBRUARY, 2026
BEFORE
THE HON'BLE MR. JUSTICE RAVI V HOSMANI
REGULAR SECOND APPEAL NO. 889 OF 2025 (INJ)
C/W
REGULAR SECOND APPEAL NO. 855 OF 2025 (DEC)

BETWEEN:

SRI B M KUMAR
S/O LATE B.R.MANJA SHETTY,
AGED ABOUT 56 YEARS,
R/O LAKSHMI NIVAS,
PENSION MOHALLA,
CHIKKAMAGALURU CITY - 577 101.

...APPELLANT (COMMON)

[BY SRI SACHIN B S., ADVOCATE -(PH)]

AND:

1. SMT. K R ROOPA
W/O LATE B.R. MANJASHETTY,
AGED ABOUT 54 YEARS,
R/A MANJUNATHA KRUPA,
PENSION MOHALLA,
CHIKKAMAGALURU - 577 101.

2. SMT. C.M. JAYANTHI
D/O LATE B.R. MANJASHETTY,
AGED ABOUT 56 YEARS,
R/O GOWRIKALUVE,
VIJAYAPURA,
CHIKKAMAGALURU CITY - 577 101.

...RESPONDENTS (COMMON)

[NOTICE TO R1 - SERVED AND UNREPRESENTED;
V/O/D 15.12.2025 NOTICE TO R2 IS D/W;
V/O/D 31.01.2026 SERVICE AGAINST PROPOSED R3 IS H/S]

Digitally signed
by ANUSHA V
Location: High
Court of
Karnataka



NC: 2026:KHC:6474
RSA No. 889 of 2025
C/W RSA No. 855 of 2025

THIS RSA NO.889/2025 IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AN DECREE DATED 22.02.2025 PASSED IN RA NO.5/2020 ON THE FILE OF II ADDITIONAL DISTRICT AND SESSIONS JUDGE, AT CHIKKAMAGALURU, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 19.11.2019 PASSED IN OS NO.96/2015 ON THE FILE OF IST ADDITIONAL SENIOR CIVIL JUDGE, CHIKKAMAGALURU.

THIS RSA NO.855/2025 IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AN DECREE DATED 22.02.2025 PASSED IN RA NO.4/2020 ON THE FILE OF II ADDITIONAL DISTRICT AND SESSIONS JUDGE, AT CHIKKAMAGALURU, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 19.11.2019 PASSED IN OS NO.66/2015 ON THE FILE OF IST ADDITIONAL SENIOR CIVIL JUDGE, CHIKKAMAGALURU.

THESE APPEALS, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI



ORAL JUDGMENT

Challenging common judgment and decree dated 22.02.2025 passed by II Additional District and Sessions Judge, Chikkamagaluru in RAs no.4/2020 and 5/2020 confirming common judgment and decree dated 19.11.2019 passed by I Additional Senior Civil Judge, Chikkamagaluru, in OS nos.66/2015 and 96/2015, above appeals are filed.

2. Sri Sachin BS, learned counsel for appellant, submitted, above appeals arise out of four civil suits between parties. Brief facts as stated were that appellant herein - BM Kumar and his sister - respondent no.2 herein - Smt.BM Jayanthi (together as '**plaintiffs**') had earlier filed P&SC no.5/2010 for Succession Certificate. Same was contested by respondent no.1 herein - Smt.KR Roopa ('**defendant**') and therefore converted to OS no.8/2013. *Plaintiffs* had also sought for partition of their 2/3rd share in suit property. Same was clubbed with OS no.282/2012 filed by *defendant* against them for permanent injunction restraining them from trespassing into suit property and disturbing peaceful possession etc. Same was



re-numbered as OS no.65/2015 and clubbed with OS no.8/2013.

3. Apart from above, *defendant* had filed OS no.34/2011 against *plaintiffs* for declaration of *Will* dated 14.03.2007 executed by BR Manjashetty bequeathing suit property to her. Same was re-numbered as OS no.66/2015 and clubbed with OS no.8/2013. Likewise, *plaintiffs* filed OS no.126/2011 for permanent injunction restraining *defendant* from alienating suit property and disturbing their peaceful possession. Said suit was re-numbered as OS no.96/2015 and clubbed with OS no.8/2013.

4. In OS no.8/2013, *plaintiffs* claimed to be children of late BR Manjashetty ('**BRM**', for short), who died on 11.04.2010 and that *defendant* was his second wife, with no issues. It was stated, during his life time, *BRM*, had nominated *defendant* as his nominee for his bank accounts. Based on same, *defendant* had withdrawn amount from ING Vysya Bank, Avenue Road, Bengaluru, received Rs.1,00,000/- from LIC under Policy no.621579066, in addition to Rs.8,26,964/- from



Axis Bank, Chikkamagaluru Branch and failed to handover 2/3rd shares of said amounts to *plaintiffs*.

5. On appearance, *defendant* filed written statement/additional written statement admitting *plaintiffs* as children and herself as second wife of *BRM*. She also admitted withdrawal of amount from ING Vyshya Bank, receipt of money from LIC not only as nominee but also as legatee under *Will* dated 14.03.2007. It was stated that all properties held by *BRM* were his self-acquired properties and that *BRM* had executed registered Partition Deed dated 21.06.1999 with plaintiff no.1. In terms of partition, plaintiff no.1 had received his share and therefore, there was no joint property in existence. It was further stated, while she was in Bengaluru for treatment of fracture of her leg sustained on 21.05.2010, *plaintiffs* had illegally got their names entered in respect of property of *BRM*. Immediately on realizing same, she filed application with CMC. She stated that she was not an earning member and depended on income of her husband and *plaintiffs* were seeking to evict her from suit property, and therefore, suit was not maintainable and sought for its dismissal.



6. Based on pleadings, trial Court framed following:

ISSUES in O.S.no.66/2015

1. *Whether the plaintiff proves that she is the legally wedded 2nd wife of late Sri.B.R.Manja Shetty?*
2. *Whether the plaintiff proves that the Will dated 14.03.2007 executed by late B.R.Manjashetty is original and genuine?*
3. *Whether the plaintiff is entitled for the relief as sought for?*
4. *What order or decree?*

Additional Issues framed on 10.04.2018:

1. *Whether the plaintiff proves that late B.R.Manjashetty was not having any ancestral property and he earned property from his own sweat?*
2. *Whether the plaintiff proves that there was a registered partition dated 21.06.1999 between B.R.Manjashetty and 1st defendant in which the house situated at Pension Mohalla, Chikkamagaluru and other properties were allotted to the share of B.R.Manjashetty and therefore he become the absolute owner of the said properties?*
3. *Whether the plaintiff proves that the defendants have forged, created and fabricated the Will dated 07.01.2010?*
4. *Whether the defendants prove that late B.R.Manjashetty acquired share from his joint ancestral property?*
5. *Whether the defendant No.2 proves that partition deed dated 21.06.1999 is not binding on her?*
6. *Whether the defendants prove that late B.R.Manjashetty was suffering from heart ailment*



and ill for a longtime and was not in a sound state of mind to execute the Will in favour of plaintiff?

7. *Whether the 1st defendant proves that late B.R.Manjashetty executed Will dated 07.01.2010 in his favour bequeathing the suit schedule property and it is a last and final Will?*

Additional Issue framed on 19.06.2018:

1. *Whether the defendants prove that suit of the plaintiff is not maintainable under law?*

Issues in O.S.no.96/2015

1. *Whether the plaintiffs prove that they are in possession of suit schedule property as on date of suit?*
2. *Whether the plaintiff proves that there an alleged interference by the defendant?*
3. *Whether the plaintiff entitled relief of permanent injunction as sought for?*
4. *What order or decree?*

7. In common trial, plaintiff no.1 and two others deposed as PWs.1 to 3 and got marked Exhibits-P1 to P100. In rebuttal, defendant and two others deposed as DWs.1 to 3 and got marked Exhibits-D1 to D19.

8. On consideration, insofar as OS no.66/2015, trial Court answered issues no.1 to 3 and additional issues no.1 to 3 in affirmative, issues no.4 to 8 in negative and issue no.4 by



decreeing suit. In OS no.96/2015, it answered issues no.1 to 3 in negative and issue no.4 by dismissing suit. Trial Court also dismissed OS no.8/2013 and decreed OS no.65/2015.

9. Aggrieved, plaintiff no.1 filed RAs no.2 to 5/2020, wherein RAs no.4 and 5/2020 were against judgment and decree in OS no.66/2015 and OS no.96/2015 respectively.

10. Appeals were clubbed, first appellate Court framed following common points for consideration:

- 1. Whether the appellant has made out sufficient grounds to allow I.A Nos.II and III as prayed for in R.A No.05/2020?*
- 2. Whether the appellant establishes that the trial court has committed an error in dismissing the suits of the plaintiffs?*
- 3. Whether the interference is called for in the common judgment and decree of the trial court?*
- 4. What order?*

11. On consideration, points no.1 to 3 were answered in negative and point no.4 by dismissing appeals. Aggrieved thereby plaintiff no.1, has preferred appeals only against judgment and decree in RAs no.4 and 5/2020.



12. It was submitted, both Courts failed to conduct '**PANCHAPADI**' enquiry as held required by this Court in **J.T. Surappa v. Satchidhanandendra Saraswathi Swamiji Public Charitable Trust**, reported in **ILR 2008 Kar 2115**:

"24. Therefore, the court has to tread a careful path in the enquiry to be conducted with regard to Will. The said path consists of five steps "PANCHAPADI". The path of enquiry and steps to be traversed are as under:—

- (1) Whether the Will bears the signature or mark of the testator and is duly attested by two witnesses and whether any attesting witness is examined to prove the Will?*
- (2) Whether the natural heirs have been disinherited? If so, what is the reason?*
- (3) Whether the testator was in a sound state of mind at the time of executing the Will?*
- (4) Whether any suspicious circumstances exist surrounding the execution of the Will?*
- (5) Whether the Will has been executed in accordance with Section 63 of the Indian Succession Act, 1925, read with Section 68 of the Evidence Act?"*

13. And relying upon decision of Hon'ble Supreme Court in case of **Chinu Rani Ghosh v. Subhash Ghosh**, reported in **2024 SCC OnLine SC 4070**, it was submitted, there was failure to prove *Will* as per requirements of Section 63 of



Succession Act and Section 68 of Evidence Act. It was submitted, at end of Ex.D1 - *Will* three persons were showed as attestors namely NK Yathiraj, D Thimmegowda and NS Purushottamachar. But witnesses shown at page 5 of said deed were Vijaykumar and Shyamrao S/o Rangojirao, neither of whom were examined by defendant. Hence, interference by this Court was warranted.

14. It was submitted, there was no dispute about plaintiffs being children of *BRM* and his natural heirs/successors. It was submitted, *Will* dated 14.03.2007 propounded by defendant purported to disinherit natural heirs without any convincing reason. It was submitted, only reason stated about prior disposition of four sites in Mysore was demonstrably false. Both Courts noted that no such properties existed. Consequently, when reason stated for disinheritance was false, in absence of any explanation, *Will* was required to be held disproved on account of suspicious circumstance.

15. It was submitted, in cross-examination of DW-2, scribe of Ex.D1, it was elicited that he had signed *Will* after its preparation and that neither testator nor attestors signed in his



presence. He admitted Vijaykumar - typist in his office did not sign *Will*. And, DW-3 examined as attesor, stated that prior to registration, testator read *Will* and signed it and thereafter Yathiraj, himself and Purushottamachar signed as attestors. In cross-examination, he admitted that he had only signed *Will* and did not participate in registration and that Vijaykumar and Shyamrao referred to as identifiers in *Will*, were office assistants of Advocate Sheshadri. It was submitted, said admission would cast serious doubt about DW-3 as attesor and due to non-examination of Vijaykumar and Shyamrao, there was non-compliance with requirements of Section 63 of Indian Succession Act and Section 68 of Evidence Act.

16. It was further fairly submitted, in case, defendant were to succeed in establishing succession to suit property as per Ex.D1 - *Will*, plaintiffs would not be entitled for relief of injunction being pursued in connected appeal.

17. In view of above, learned counsel prayed for answering following substantial questions of law arising for consideration in favour of appellant and allow appeals:



- a) *Whether judgment and decree passed by both Courts were contrary to binding precedents and Courts erred in dismissing plaintiffs' suits?*
- b) *Whether both Courts erred in upholding Will propounded by defendant ignoring grave suspicious circumstances and even when defendant failed to discharge burden as per Section 63 of Indian Succession Act, 1925 and Section 68 of Indian Evidence Act, 1872?"*

18. Heard, learned counsel, perused impugned judgment and decree and copies of Exhibit-D1, Exhibits-P8, P9 and P49 along with deposition of PW-1 and DWs-1 to 3.

19. From above, it is seen, these appeals are by plaintiff no.1, against concurrent findings in suit for declaration and permanent injunction respectively.

20. At outset, it requires to be noted that there is no dispute about suit property being self acquired properties of *BRM*, about plaintiffs being his children from first wife and *BRM* marrying defendant after death of his first wife. Though plaintiffs staked claim to suit property as legatees under *Will* dated 07.01.2010 in OS no.8/2013, same ended in dismissal of suit and confirmed in appeal. However, plaintiffs would be



entitled for succession to properties of *BRM*, in case they are able to upset claim of defendant under Ex.D1 - *Will*.

21. In its oft quoted decisions in case of **H. Venkatachala Iyengar v. BN Thimmajamma** reported in **1958 SCC OnLine SC 31/AIR 1959 SC 443**, it is held:

"18. What is the true legal position in the matter of proof of wills? It is well-known that the proof of wills presents a recurring topic for decision in courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63



requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters."

22. Emphasis on meeting requirements of law both under Section 63 of Succession Act as well as Section 68 of Evidence Act is now well entrenched. In order to meet said requirements, defendant got marked original *Will* as Ex.D1. Perusal of same reveals it to be signed by Testator and attested by three persons namely NK Yathiraj, D Thimmegowda and NS Purushottamachar. Further, as required, defendant examined one of attestors namely D Thimmegowda as DW.3. As noted



above, DW.3 deposed unequivocally about testator reading and thereafter signing *Will* followed by signature of attestors including himself and same having withstood cross examination. A doubt is sought to be cast by contending that *Will* showed two other persons as witnesses namely Vijaykumar and Shyamrao neither of whom were examined. However, it is seen, said persons were recorded as identifiers of executant in order to meet requirements of process of registration and not as witnesses of *Will*. Therefore, their non-examination would not have any bearing on validity or proof of *Will*. As seen above, one of named attestors has been examined and he has deposed about due attestation. Thus, requirements of provisions of law referred to above are met.

23. Apart from above challenge, *Will* is also alleged to be suffering from suspicious circumstances on ground of disinheritance of plaintiffs without justification. Said contention is sought to be reinforced by alleging only reason mentioned namely about plaintiffs being given certain properties in Mysore was incorrect/false.



24. Perusal of Ex.D1 - Will reveals, bequeathal of suit properties solely in favour of defendant was due to love and affection expended by legatee on testator as his wife. Testator has also mentioned that plaintiffs - his children were given certain properties in Mysore. This recital in *Will*, would indicate conscious decision of testator to exclude his children. While absence of any reason for disinheritance of any natural successor would be treated as a suspicious circumstance requiring explanation, it would not be so in case of express exclusion. Moreso, in absence of any allegation and material to substantiate same that such exclusion was attributable to legatee.

25. Admittedly, there is neither any allegation or any material to establish that defendant had any role or participated in process of preparation and execution of *Will*. Besides, Hon'ble Supreme Court in case of **K.S. Dinachandran v. Shyla Joseph** reported in **2025 SCC OnLine SC 2848**, has held

"Though great caution should be exercised in upholding a will, where the legal heirs are divested in whole, proof of a will remains a question of fact and satisfaction of the conscience of the court is only a rule of prudence, was the declaration."



NC: 2026:KHC:6474
RSA No. 889 of 2025
C/W RSA No. 855 of 2025

26. Thus, finding about proof of *Will* and suspicious circumstances would be a finding of fact. On this count also, it is held, no substantial question of law arises for consideration.

Hence, RSA no.885/2025 is *dismissed*. Consequently, RSA no.889/2025 is also *dismissed*.

In view of dismissal of appeals, pending IAs are also dismissed.

Sd/-
(RAVI V HOSMANI)
JUDGE

PSG/AV/GRD
List No.: 1 Sl No.: 51